must be shown to be clear and unequivocal. "It is one thing not to assert an intention to use a way, and another thing to assert an intention to abandon it." Sir Edward Fry in *James* v. *Stevenson,* 18 A. C. 162; *Johnson* v. *Stitt,* 21 R. I. 429. If the dominant owner has led others to believe the way to be abandoned, he will be estopped to claim the easement. *Trimble* v. *King,* 131 Ky. 1. In the principal case, there could be no estoppel, since the dominant owner constantly protested.

EASEMENTS—USE OF WALL FOR ADVERTISING—IRREVOCABLE PRIVILEGE.—Plaintiff contracted in writing with the defendant, for the privilege to paint and maintain signs upon the walls of defendant's building. In an action for an injunction restraining the defendant from interfering with this privilege, *held,* the authority or right to use the walls in question was not merely permissive, but amounted to the grant of a right in the nature of an easement and was not a mere revocable license. *Thomas Cusack Co.* v. *Myers* (Iowa, 1920), 178 N. W. 401.

There was no dominant estate in this case and if an easement existed, it must be an easement in gross. Easements in gross are generally recognized in this country and are not revocable at will. *New York* v. *Law,* 125 N. Y. 380. The courts have had great difficulty in distinguishing between easements in gross and mere licenses. See 27 YALE L. JOUR. 66. The right to place advertising on walls has been held to imply a right of way upon the land sufficient to create a burden in the nature of an easement. *Willoughby* v. *Lawrence,* 116 Ill. 11. If the right is granted in the form of a lease, and involves possession of the land, it is treated as a lease. *C. J. Gude Co.* v. *Farley,* 58 N. Y. Sup. 1036. Most of the advertising cases in the books involve sign-boards. One can have an easement for the support of a sign-board from a wall just the same as if it were supported from the soil direct. *Moody* v. *Steggles,* 12 Ch. D. 261. A mere naked license is founded upon personal confidence and is therefore not assignable. *Morrill* v. *Mackman,* 24 Mich. 282. The courts that maintain that the facts in the principal case constitute a license frequently hold that an executed license for a term and for a consideration cannot be revoked. *Levy* v. *Louisville Gunning System,* 121 Ky. 510; 18 AM. & ENG. ENCY. [2d Ed.] 1144.

EVIDENCE—DISCOVERY OF DOCUMENTS—PRIVILEGE.—Plaintiffs, in a claim for an estate, make application for the production of certain documents. Defendants, who are the executors of the estate, claim professional privilege for the documents, as they were written by one of the executors in his professional capacity of attorney, for the use of the executors, and further, that fraud of attorney and client has not been sufficiently alleged. *Held,* the communications were privileged. *O'Rourke* v. *Darbishire,* [1920] A. C. 581.

The House of Lords passes squarely on the question of whether professional privilege is not displaced by the fact that the solicitor consulted is himself one of the trustees, and is acting as professional adviser to himself and his co-trustees. In *Re Postlethwaite,* 35 Ch. D. 722, North, J., was of the opinion that such a communication was not privileged, but the Lords, in the

principal case, after overruling this decision, justify themselves on the ground that the basis of his decision was the proprietary right in the plaintiffs, and not that the privilege was destroyed; but saying, nevertheless that if the decision was based on the latter ground, it was wrong. The American cases touching on this point are decided on the basis of an attorney aiding a client in a fraud, and hence not privileged, although there are two decisions pointing in the opposite direction from the English case. In *Jeanes* v. *Fridenberg,* 3 PA. LAW JOURNAL, 199, the court holds that an attorney is not privileged from communicating facts concerning his client where the attorney himself is a party to the transaction he is called upon to disclose, and in *Matter of Robinson,* 140 N. Y. App. Div. 329, 336, the court in considering the question of an attorney's privilege, says, "When the corporation made him (the attorney) a director, and he accepted that office, such acceptance necessarily removed him from the relation of attorney or counsel to its officers so far as the corporate affairs were concerned." If the courts are called upon to order the production of an opinion written by "A" in his capacity as attorney to "A" in his capacity as executor, we would see a further application of this rather unique point. The question whether an attorney can be examined as a witness against his client in case of an attempt to perpetrate a fraud has been discussed in a great number of cases with varying results. *Matthews* v. *Hoagland,* 48 N. J. Eq. 455, 21 Atl. 1054; 66 Am. St. Rep. 237, note. In the *O'Rourke* case the Court points out the difficulty involved in the application of the rule that fraud will defeat the objection of privilege, for assuredly if merely crying fraud before a privileged communication lays it bare for inspection, the long standing rule of privilege as to communications between attorney and client has ceased to be of any practical benefit; while on the other hand, if the evidence by which fraud is to be proved cannot be obtained, the law has opened another avenue by which justice may be evaded. The court definitely settles that the mere allegation of fraud is insufficient, but that there must be something to give color to the charge, and that while every case must be decided upon its own merits, *Reg.* v. *Cox,* 14 Q. B. 153, 175, the plaintiff must show to the satisfaction of the court good grounds for saying that prima facie a state of things exists, which if not displaced at the trial will support a charge of fraud to rebut the presumption of privilege.

EVIDENCE—MOVING PICTURES—BEST EVIDENCE RULE.—In a woman's action under the Civil Rights Law for damages for exhibition without written consent of a motion picture of Caesarean operation, testimony of witnesses who had seen the picture as thrown on the screen in theaters, *held,* admissible to show it represented the plaintiff and could be identified as her picture. *Feeney* v. *Young* (1920), 181 N. Y. Sup. 481.

There is considerable room for doubt whether the film would constitute best evidence, were the best evidence rule applicable in this case; because the film was so small that it could not be made out, and also because the presentation upon the screen constituted the offense under the statute. The best evidence rule applies to written instruments. *Western Assur. Co.* v. *Polk,* 104 Fed. 649; *Orr* v. *Le Claire,* 55 Wis. 93. But where the writing is not in